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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

BERNADINE GRIFFITH, et al.,
individually and on behalf of all others
similarly situated,

Plaintiffs,

VS.

TIKTOK, INC, a corporation;
BYTEDANCE, INC., a corporation,

Defendants.

CASE NO. 5:23-cv-00964-SB-E

**EX PARTE APPLICATION TO
SHORTEN TIME AND ADVANCE
HEARING DATE ON UNOPPOSED
MOTION TO MODIFY CASE
MANAGEMENT ORDER [DKT
NOS. 40 & 85]**

*[Filed Concurrently with Masters
Declaration; [Proposed] Order]*

Assigned to Hon. Stanley Blumenfeld,
Jr.
Courtroom 6C

Action Filed: May 26, 2023
Trial Date: November 25, 2024

1 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to Local Rule 7-19, Plaintiffs
3 respectfully apply *ex parte* for an order advancing the hearing date and shortening
4 time on Plaintiffs' Unopposed Motion to Modify Case Management Order [Dkt
5 Nos. 40 & 85] And Continue Deadlines (the "Unopposed Motion").

6 Plaintiffs seek the hearing date for the Unopposed Motion to be advanced to
7 April 19, 2024. As Defendants have indicated that they will not oppose the relief
8 sought, no opposition papers or reply papers are expected to be filed. Declaration of
9 Marc E. Masters ("Masters Decl.") ¶ 2.

10 This *Ex Parte* Application ("Application") is made on the ground that the
11 Case Management Order currently sets Plaintiffs' deadline to file a motion for class
12 certification as May 3, 2024. The earliest available hearing date for the Unopposed
13 Motion – which seeks, among other things, an extension to the deadline to file a
14 motion for class certification – was May 10, 2024, seven days after the existing
15 deadline. Unless the Application is granted, therefore, Plaintiffs' Motion will not be
16 heard before the existing deadline.

17 Pursuant to Local Rule 7-19, this Application is made following the
18 notification of all counsel of record on this case, as set forth in the accompanying
19 Declaration of Marc E. Masters. Counsel for Defendants have indicated that they
20 will not oppose this Application. Masters Decl. ¶ 2. Counsel of record's names and
21 contact information are as follows:

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26 This Application is based upon this Notice and Application, the attached
27 Memorandum of Points and Authorities, the concurrently-filed Declaration of Marc
28 E. Masters, the Proposed Order, which is being lodged in accordance with Local
Rule 7-20, all papers and pleadings on file in this action, and upon such further
evidence and argument as may be presented to the Court in connection with this
Application.

1 DATED: April 12, 2024

2 By: /s/ Christopher J. Lee
3 Christopher J. Lee

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This *Ex Parte* Application seeks to shorten time and advance the hearing date on Plaintiffs' Unopposed Motion to Modify Case Management Order [Dkt Nos. 40 & 85] And Continue Deadlines (the "Unopposed Motion"), from May 10, 2024 to April 19, 2024. Defendants have indicated that they will not oppose the relief sought by the Unopposed Motion, nor do they oppose advancement of the hearing through the instant *Ex Parte* Application. Accordingly, Plaintiffs respectfully request that the Court advance the hearing date on the Unopposed Motion to April 19, 2024.

II. ARGUMENT

A. Plaintiffs will be prejudiced if the Unopposed Motion is heard pursuant to regular noticed motion procedures.

The primary basis for the Unopposed Motion is Plaintiffs' inability to obtain key information potentially relevant to class certification due to repeated and critical discovery delays by Defendants, including continued delays concerning discovery matters that formed the basis for Plaintiffs' prior modification motion, which was granted by the Court. Dkt. 82.

The current deadline to file a motion for class certification is May 3, 2024. However, the earliest available hearing date the Unopposed Motion could be heard is May 10, 2024. As such, absent an order shortening time and advancing the hearing date, a key component of the relief sought – the extension of the deadline for filing Plaintiffs' class certification motion – will be rendered moot.

This will cause substantial prejudice for Plaintiffs, as they will have to file their class certification motion without adequate time to review and analyze key information, portions of which Plaintiffs were forced to successfully move to compel to obtain, including: (1) a comprehensive one-day sample of non-user data collected, generated, and processed by the TikTok SDK; (2) the remainder of Defendants' document production, which currently consists of approximately only

1 3,000 unique documents; (3) the bulk of the relevant source code in this case,
 2 including certain source code for their Pixel, Events API, and servers, and all
 3 historical source code; (4) documents dated prior to the previously agreed-upon
 4 discovery start date of January 1, 2020, which Defendants recently agreed to move
 5 to April 1, 2019, after Plaintiffs discovered evidence that the Pixel was publicly
 6 released before 2020 as Defendants previously and inaccurately represented. *See*
 7 *generally* Unopposed Motion.

8 Therefore, advancing the hearing date will serve the interests of justice
 9 because it will allow the Court to consider the Unopposed Motion and, if deemed
 10 appropriate, grant the relief requested in that motion in its entirety. Further,
 11 Defendants will not be prejudiced by advancing the hearing date, as they do not
 12 oppose this *Ex Parte* Application, nor do they intend to oppose the relief sought by
 13 the Unopposed Motion.

14 **B. Plaintiffs have acted diligently and are not at fault in creating the
 15 exigency that gives rise to the need for *ex parte* relief.**

16 Plaintiffs' diligent pursuit of discovery is documented in more detail in the
 17 Unopposed Motion, as well as in their prior modification motion. Dkt. 82.
 18 Moreover, Plaintiffs only became aware of many of the discovery issues that give
 19 rise to the Unopposed Motion based on developments that have occurred within the
 20 past week. Plaintiffs received the latest inadequate supplemental production of
 21 documents from Defendants – which contained only 221 new, unique documents –
 22 on April 5, 2024 – **one week** before filing of the unopposed motion. Declaration of
 23 Gloria Park in Support of Unopposed Motion (“Park Decl.”) ¶ 6. Plaintiffs received
 24 Judge Eick’s ruling – which set April 29, 2024 as the deadline for Defendants to
 25 produce their unproduced relevant source code – on April 8, 2024, **four days** before
 26 the filing of the Unopposed Motion. Dkt. 130. And Defendants informed Plaintiffs
 27 about new, previously undisclosed sources of raw data collected through the TikTok
 28 SDK on April 10, 2024 – only **two days** before filing of the Unopposed Motion. *Id.*

1 Ex. 6.

2 Plaintiffs are aware that modifications of the Case Management Order are
3 disfavored and have been working to advance the case as diligently as possible.
4 Plaintiffs have expended a significant amount of time and resources to attempt to
5 ensure that all discovery tasks potentially relevant to class certification would be
6 completed well in advance of the May 3, 2024 deadline, including litigating four
7 successful motions to compel. Unfortunately, the developments of the past week
8 have led Plaintiffs to realize that there is insufficient time left in the schedule before
9 the current class certification motion deadline. Again, this is due to Defendants'
10 erroneous identification of the appropriate discovery start date, Defendants' failure
11 to produce relevant documents in a timely manner, Defendants' delay in producing
12 relevant source code until a motion to compel was on file, and Defendants' multiple
13 errors in collecting a one-day sample of raw data. In sum, Plaintiffs have acted
14 diligently, and it is due to factors beyond their control that the Unopposed Motion
15 cannot be adequately heard pursuant to standard noticed motion procedures.

16 **III. RELIEF REQUESTED**

17 Plaintiffs' respectfully request that the Court advance the hearing date for the
18 Unopposed Motion to April 19, 2024.

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2 DATED: April 12, 2024

3 By: /s/ Christopher J. Lee
4 Christopher J. Lee

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CERTIFICATE OF COMPLIANCE

2 The undersigned, counsel of record for Plaintiffs, certifies that this brief
3 contains 829 words, which complies with the word limit of L.R. 11-6.1.

5 | DATED: April 12, 2024

Mr. E. M. M. S.

Marc E. Masters